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February 15, 2011

HUNTER FERGUSON
Direct (206) 386-7514
hoferguson@stoel.com

VIA ELECTRONIC FILING

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

ENTERED
Office of Proceedings

FEB 15 2011

Part of
Public Record

Re: GNP Rly, Inc. Petition for Exemption, STB Finance Docket No. 35407;

**GNP Rly, Inc. Petition to Vacate NITU or Abandonment, STB Docket Nos. AB-6
(Sub. No. 463X) and AB-6 (Sub. No. 465X)**

**Reply of the City of Redmond, WA, King County, WA, and Central Puget Sound
Regional Transit Authority to GNP Rly Inc.'s Motion to Hold Proceedings in
Abeyance**

Dear Ms. Brown:

Please find enclosed the Reply of the City of Redmond, WA, King County, WA, and Central Puget Sound Regional Transit Authority to GNP RLY Inc.'s motion to hold the above-captioned proceedings in abeyance. If you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Hunter Ferguson".

Hunter Ferguson
Attorney for City of Redmond, Washington

cc: Parties of Record
70554082.1 0058059-00001

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings

FEB 15 2011

Part of
Public Record

STB Docket No. AB-6 (Sub-No. 463X)

**BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY,
WASHINGTON
(Redmond Spur, MP 0.00 to MP 7.30)**

STB Docket No. AB-6 (Sub-No. 465X)

**BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY,
WASHINGTON
(Woodinville Subdivision, MP 11.25 to MP 23.80)**

STB Finance Docket No. 35407

**GNP RLY INC. – ACQUISITION AND OPERATION EXEMPTION – REDMOND SPUR
AND WOODINVILLE SUBDIVISION – VERIFIED PETITION FOR EXEMPTION
PURSUANT TO 49 U.S.C. § 10502**

**REPLY OF THE CITY OF REDMOND, WA, KING COUNTY, WA, AND THE
CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY TO
GNP RLY INC.'S MOTION TO HOLD PROCEEDINGS IN ABEYANCE**

Matthew Cohen
Hunter Ferguson
STOEL RIVES LLP
600 University Street, Suite 3600
Seattle, WA 98101
(206) 624-9000

Attorneys for the City of Redmond, Washington

February 15, 2011

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB-6 (Sub-No. 463X)

**BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY,
WASHINGTON
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**GNP RLY INC. – ACQUISITION AND OPERATION EXEMPTION – REDMOND SPUR
AND WOODINVILLE SUBDIVISION – VERIFIED PETITION FOR EXEMPTION
PURSUANT TO 49 U.S.C. § 10502**

**REPLY OF THE CITY OF REDMOND, WA, KING COUNTY, WA, AND THE
CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY TO
GNP RLY INC.'S MOTION TO HOLD PROCEEDINGS IN ABEYANCE**

On February 2, 2011 creditors of Petitioner GNP Railway filed an Involuntary Petition For Relief against GNP in the U.S. Bankruptcy Court for the Western District of Washington.¹ On February 7 GNP filed a motion (in the form of a letter) asking the Board to hold proceedings in abeyance for 60 days on GNP's pending petitions to reactivate rail service on the Redmond Spur and a segment of the Woodinville Subdivision. The motion acknowledged GNP's receipt

¹ A copy of the petition is attached as Exhibit 1 to this memorandum.

of the bankruptcy petition, but did not reveal the basis for the stay request, other than “to avoid an unnecessary waste of the Board’s time and resources”²

Respondents the City of Redmond, Washington, King County, Washington, and the Central Puget Sound Regional Transit Authority (“the Regional Governments”) strongly urge the Board to deny GNP’s stay request, and to expedite a decision on the merits of GNP’s petition.

Before turning to GNP’s stay request, the Regional Governments think it important that the Board understand the full context of GNP’s stay request, which GNP’s opaque letter does not reveal. Creditors listed on the bankruptcy petition include Ballard Terminal Railroad Company (“BTRC”), the short line operator that contracted with GNP to deliver freight to customers on the Woodinville Subdivision north of Woodinville (“the Freight Segment”). On February 11, 2011 GNP’s creditors filed a motion for summary judgment against GNP to declare GNP insolvent. Byron Cole, the General Manager of BTRC, filed a declaration in support of that motion, stating that BTRC has received no compensation from GNP since BTR began hauling freight on the line 13 months ago.³ Douglas Engle, the CFO and a 50 percent shareholder in GNP, filed a declaration stating that “GNP is insolvent”⁴ and alleging numerous financial improprieties and bookkeeping omissions by GNP’s Chairman and President, Thomas Payne.

The Board should deny GNP’s stay request for two reasons. First, the GNP bankruptcy is a Chapter 11 involuntary reorganization. Accordingly, it is likely that GNP (or its successor) will continue GNP’s present, ill-founded effort to force its way onto the railbanked lines at issue

² Letter of February 7, 2011 from John D. Heffner to Cynthia Brown (filed February 7, 2011).

³ Declaration of Byron D. Cole, Exhibit 2 to this reply.

⁴ Declaration of Douglas Engle at 2, Exhibit 3 to this reply.

here. For example, although Mr. Engle describes the financial incompetence of GNP's current management, he continues to assert that GNP's business plan is viable.⁵ Accordingly, a Board decision on the merits of GNP's petitions remains important.

Second, in their comments opposing GNP's petitions, the Regional Governments advised that they have plans for development of the railbanked rights of way, consistent with their obligation to preserve the corridor for future restoration of rail service. Some of those plans involve construction projects scheduled for the spring and summer of 2011.⁶ The Regional Governments seek a decision by the Board on the merits of GNP's arguments, but any delay in the consideration of those arguments adds uncertainty and risk to projects funded for implementation in 2011 and beyond.

For these reasons, the Regional Governments urge the Board to deny GNP's stay request, and to issue a decision on GNP's pending petitions on the merits. By separate letter to Ms. Cynthia Brown, the Regional Governments will advise the Board and the parties that the Regional Governments no longer believe that it would be productive to engage the Board's Office of Public Assistance to convene a meeting among the parties.

⁵ Declaration of Douglas Engle at 4, Exhibit 3 to this reply.

⁶ For instance, the City of Redmond plans to excavate a one-mile segment of the right of way in downtown Redmond beginning in June 2011 to install a four foot diameter stormwater trunk line. The new line will collect and treat stormwater from the downtown area, to reduce impacts on the nearby Sammamish Slough into which the stormwater flows. While the City is engineering the line to preserve the corridor for future rail service, the City must remove the track and ties on a roughly one mile segment of the railbanked Redmond Spur to install the line. See Verified Statement of Carolyn Hope Regarding Petitions of GNP Railway, Inc. ¶ 17 (filed November 9, 2010).

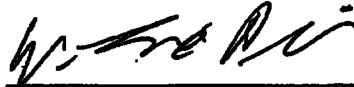
February 15, 2011

Respectfully submitted,



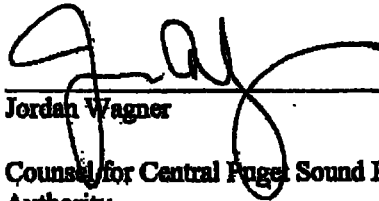
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Counsel for King County, Washington



Jordan Wagner
Counsel for Central Puget Sound Regional Transit
Authority

**Case Title: GNP RLY, INC.--ACQUISITION AND OPERATION
EXEMPTION--REDMOND SPUR AND WOODINVILLE SUBDIVISION
Docket No. 35407 and
STB Docket Nos. AB-6 (Sub No. 463X and Sub No. 465X)
CERTIFICATE OF SERVICE**

<u>Filed By</u>	<u>Address</u>	<u>Email</u>	<u>Filed For</u>
1. Matthew Cohen	Stoel Rives Llp 600 University Street, Suite 3600 Seattle, WA 98101 Tel: 206-386-7569 Fax: 206-386-7500	Mcohen@Stoel.Com	City Of Redmond WA
2. Hunter Ferguson	Stoel Rives Llp 600 University Street, Suite 3600 Seattle, WA 98101 Tel: 206-386-7514	Hoferguson@Stoel.Com	
3. Charles A. Spitulnik W. Eric Pilsk Allison I. Fultz	Kaplan Kirsch & Rockwell Llp 1001 Connecticut Avenue, Nw. Suite 800 Washington, DC 20036 Tel: (202) 955-5600	csputulnik@kaplankirsch.com epilsk@kaplankirsch.com afultz@kaplankirsch.com	King County, WA
4. Pete Ramels, Andrew Marcuse	Office of the Prosecuting Attorney Civil Division W400 King County Courthouse 516 Third Avenue Seattle, WA 98104 Tel:	pete.ramels@kingcounty.gov andrew.marcuse@kingcounty.gov	King County
5. John D. Heffner James H. M. Savage	Law Offices 1750 K Street, N.W., Suite 350 Washington, DC 20006 Tel: 202-296-3333 Fax: 202-296-3939	j.heffner@verizon.net jsavagelaw@aim.com	Gnp Rly Inc.
6. Denis Law	City Of Renton 1055 S Grady Way Renton, WA 98057 Tel: 425-430-6500	by U. S. Mail	City Of Renton
7. Lawrence J. Warren	City of Renton PO Box 626 Renton, WA 98057 Tel: 425-430-6480	lwarren@rentonwa.gov	City of Renton
8. Isabel Safora Anne DeKoster	Port Of Seattle P. O. Box 1209 Seattle, WA 98111	safora.i@portseattle.org dekoster.a@portseattle.org	Port Of Seattle
9. Kevin Sheys	K&L Gates LLP 1601 K Street NW Washington, DC 20006 Tel: 202-778-9855 Fax: 202-778-9100	kevin.sheys@kigates.com	Port Of Seattle
10 Steve Sarkozy	City Of Bellevue P.O. Box 90012 Bellevue, WA 98009 Tel:	by U. S. Mail	City Of Bellevue
11 Kurt Triplett	City Of Kirkland 125 5Th Ave Kirkland, WA 98033 Tel:	by U. S. Mail	City Of Kirkland
12 Robert P. Vom Eigen	Foley & Lardner Llp 3000 K Street, N.W., Suite 500 Washington, DC 20007-5143	Rvomeigen@Foley.Com	Central Puget Sound Regional Transit Authority

13 Davit T. Rankin Kristy D. Clark	BNSF Railway PO Box 961039 Forth Worth, TX 76131-2828	david.rankin@bnsf.com kristy.clark@bnsf.com	BNSF
14 Karl Morell	Ball Janik LLP 1455 F Street NW, Suite 225 Washington, DC 2005 Tel: 202-638-3307 Fax: 202-783-6947	kmorell@bjllp.com	BNSF Railway Co
15 Jordan Wagner	401 S. Jackson St. Seattle, WA 98104	jordan.wagner@soundtransit.org	Sound Transit
16 Andrea C. Ferster	Rails-To-Rails Trails Conservancy 2121 Ward Court, N.W., 5th Floor Washington, DC 20037	afferster@railstotrails.org	Rails-To-Rails Trails Conservancy
17 Jean M. Cerar	Issaquah Valley Trolley PO Box 695 Issaquah, WA 98027	info@issaquahhistory.org	Issaquah Valley Trolley
18 Mike Bates	Woodinville Lumber, Inc. 15900 Woodinville-Redmond Road NE Woodinville, WA 98072 Tel: 425-488-1818 Fax: 425-488-7409	by U. S. Mail	Woodinville Lumber, Inc.
19 Kathy Cox	Marketing Philharmonic 218 Main Street #668 Kirkland, WA 98033 Tel: 425-822-3925	by U. S. Mail	Marketing Philharmonic
20 Don Davis	Master Builders Association of King & Snohomish Counties 335 - 116th Avenue SE Bellevue, WA 98004 Tel: 425-451-7920 Fax: 425-646-5985	by U. S. Mail	Master Builders Association of King & Snohomish Counties
21 Dean Kattler	Waste Management of Washington, Inc. 13225 NE 126th Place Kirkland, WA 98034 Tel: 425-823-6164 Fax: 425-814-7866	by U. S. Mail	Waste Management, Inc.
22 Ernest F. Wilson	17509 NE 38th Court Redmond, WA 98052 Tel: 425-869-8899	ewilson@spiretech.com	Ernest F. Wilson
23 Paul Zimmer	Eastside Rail Now PO Box 3524 Bellevue, WA 98009 Tel: 425-646-8517	by U. S. Mail	Eastside Rail Now

I certify that I have sent to the parties of record as set forth above & obtained from the STB website, via email/pdf and/or via U. S. Mail the following: (1) Cover letter from Hunter Ferguson to Cynthia T. Brown; and (2) Reply of the City of Redmond, WA, King County, WA and the Central Puget Sound Regional Transit Authority to GNP Rly Inc.'s Motion to Hold Proceedings in Abeyance.


Teresa Bitseff, Legal Secretary
STOEL RIVES LLP

Dated: Tuesday, February 15, 2011

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REPLY TO GNP MOTION TO HOLD PROCEEDINGS IN ABEYANCE- 7

Exhibit 1

**Involuntary Petition For Relief Under Chapter 11
Filed Against GNP Railway, Inc.,
In re GNP Rly, Inc., Case No. 11-40829-BDL (W.D. Wash.)**

**EXHIBITS FILED IN SUPPORT OF
THE REGIONAL GOVERNMENTS' REPLY TO
GNP RLY INC.'S MOTION TO HOLD PROCEEDINGS IN ABEYANCE**

United States Bankruptcy Court Western District of Washington		INVOLUNTARY PETITION
IN RE (Name of Debtor - If Individual: Last, First, Middle) GNP Rly, Inc.	ALL OTHER NAMES used by debtor in the last 8 years (Include married, maiden, and trade names.) None	
Last four digits of Social Security or other Individual's Tax I.D. No./Complete EIN If more than one, state all.) EIN: 11-3841672		
STREET ADDRESS OF DEBTOR (No. and street, city, state, 410 Garfield St. S. Tacoma, WA	MAILING ADDRESS OF DEBTOR (If different from street <div style="text-align: right;">ZIP CODE</div>	
COUNTY OF RESIDENCE OR PRINCIPAL PLACE OF BUSINESS ZIP CODE <div style="text-align: center;">Pierce 98444</div>		
LOCATION OF PRINCIPAL ASSETS OF BUSINESS DEBTOR (If different from previously listed addresses)		
CHAPTER OF BANKRUPTCY CODE UNDER WHICH PETITION IS FILED <div style="display: flex; justify-content: space-around;"> <input type="checkbox"/> Chapter 7 <input checked="" type="checkbox"/> Chapter 11 </div>		
INFORMATION REGARDING DEBTOR (Check applicable boxes)		
Nature of Debts (Check one box.) Petitioners believe. <input type="checkbox"/> Debts are primarily consumer debts <input checked="" type="checkbox"/> Debts are primarily business debts	Type of Debtor (Form of Organization) <input type="checkbox"/> Individual (Includes Joint Debtors) <input checked="" type="checkbox"/> Corporation (Includes LLC and LLP) <input type="checkbox"/> Partnership <input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below.) State Type of Entity: _____	Nature of Business (Check one box) <input type="checkbox"/> Health Care Business <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101(51)(B) <input checked="" type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input type="checkbox"/> Other
VENUE <input checked="" type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in the District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District. <input type="checkbox"/> A bankruptcy case concerning debtor's affiliate, general partner or partnership is pending in this District	FILING FEE (Check one box) <input checked="" type="checkbox"/> Full Filing Fee attached <input type="checkbox"/> Petitioner is a child support creditor or its representative, and the form specified in § 304(g) of the Bankruptcy Reform Act of 1994 is attached <i>(If a child support creditor or its representative is a petitioner, and if the petitioner files the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.)</i>	
PENDING BANKRUPTCY CASE FILED BY OR AGAINST ANY PARTNER OR AFFILIATE OF THIS DEBTOR (Report information for any additional cases on attached sheets.)		
Name of Debtor	Case Number	Date
Relationship	District	Judge
ALLEGATIONS (Check applicable boxes) 1 <input checked="" type="checkbox"/> Petitioner(s) are eligible to file this petition pursuant to 11 U.S.C. § 303(b) 2 <input checked="" type="checkbox"/> The debtor is a person against whom an order for relief may be entered under title 11 of the United States Code 3a. <input checked="" type="checkbox"/> The debtor is generally not paying such debtor's debts as they become due, unless such debts are the subject of a bona fide dispute as to liability or amount, b <input type="checkbox"/> Within 120 days preceding the filing of this petition, a custodian, other than a trustee, receiver, or agent appointed or authorized to take charge of less than substantially all of the property of the debtor for the purpose of enforcing a lien against such property, was appointed or took possession.		COURT USE ONLY

Name of Debtor GNP Rly, Inc.

Case No. _____

TRANSFER OF CLAIM

- ☐ Check this box if there has been a transfer of any claim against the debtor by or to any petitioner. Attach all documents that evidence the transfer and any statements that are required under Bankruptcy Rule 1003(a).

REQUEST FOR RELIEF

Petitioner(s) request that an order for relief be entered against the debtor under the chapter of title 11, United States Code, specified in this petition. If any petitioner is a foreign representative appointed in a foreign proceeding, a certified copy of the order of the court granting recognition is attached.

Petitioner(s) declare under penalty of perjury that the foregoing is true and correct according to the best of their knowledge, information, and belief.		
X <u>/s/Kathy S. Cox</u> <u>Managing Member</u> Signature of Petitioner or Representative (State title) <u>Marketing Philharmonic, LLC</u> <u>2-1-11</u> Name of Petitioner Date Signed Name & Mailing <u>Kathy S. Cox</u> Address of Individual _____ Signing in Representative _____ Capacity _____	X <u>/s/James E Dickmeyer PC</u> <u>2-1-11</u> Signature of Attorney Date <u>James E Dickmeyer PC</u> Name of Attorney Firm (If any) Address <u>121 Third Avenue</u> <u>Kirkland WA 98033</u> Telephone No. <u>425-889-2324</u>	
X <u>/s/Byron Cole</u> <u>General Manager</u> Signature of Petitioner or Representative (State title) <u>Ballard Terminal Railroad Company, LLC</u> <u>2-1-11</u> Name of Petitioner Date Signed Name & Mailing <u>Byron Cole</u> Address of Individual _____ Signing in Representative _____ Capacity _____	X <u>/s/James E Dickmeyer PC</u> <u>2-1-11</u> Signature of Attorney Date <u>James E Dickmeyer PC</u> Name of Attorney Firm (If any) Address <u>121 Third Avenue</u> <u>Kirkland WA 98033</u> Telephone No. <u>425-889-2324</u>	
X <u>/s/Ken Nelson</u> <u>CEO</u> Signature of Petitioner or Representative (State title) <u>San Clemente Technical Co.</u> <u>2-1-11</u> Name of Petitioner Date Signed Name & Mailing <u>Ken Nelson</u> Address of Individual _____ Signing in Representative _____ Capacity _____	X <u>/s/James E Dickmeyer PC</u> <u>2-1-11</u> Signature of Attorney Date <u>James E Dickmeyer PC</u> Name of Attorney Firm (If any) Address <u>121 Third Avenue</u> <u>Kirkland WA 98033</u> Telephone No. <u>425-889-2324</u>	
PETITIONING CREDITORS		
Name and Address of Petitioner <u>Marketing Philharmonic, LLC</u> <u>218 Main Street #668</u> <u>Kirkland WA 98033</u>	Nature of Claim <u>Services</u>	Amount of Claim <u>48,466.00</u>
Name and Address of Petitioner <u>Ballard Terminal Railroad Company, LLC</u> <u>4725 Ballard Ave NW</u> <u>Seattle WA 98107</u>	Nature of Claim <u>Freight services</u>	Amount of Claim <u>110,800.00</u>
Name and Address of Petitioner <u>San Clemente Technical Co.</u> <u>29 Calle Cameron</u> <u>San Clemente CA 92673</u>	Nature of Claim <u>Services</u>	Amount of Claim <u>15,200.00</u>
Note: If there are more than three petitioners, attach additional sheets with the statement under penalty of perjury, each petitioner's signature under the statement and the name of attorney and petitioning creditor information in the format above.		Total Amount of Petitioners' Claims <u>174,466.00</u>

0 continuation sheets attached

Exhibit 2

**Declaration of Byron D. Cole,
Founder and General Manager of
Ballard Terminal Railroad Company,
filed in *In re GNP Rly, Inc.***

**EXHIBITS FILED IN SUPPORT OF
THE REGIONAL GOVERNMENTS' REPLY TO
GNP RLY INC.'S MOTION TO HOLD PROCEEDINGS IN ABEYANCE**

Judge: Brian D. Lynch
Chapter: 11
Hearing Location: Tacoma
Hearing Date: 2-23-11
Hearing Time: 9:30 a.m.
Response Date:

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

In Re:

GNP RLY, INC.

Debtor

Case No: 11-40829-BDI.

DECLARATION OF
BYRON D. COLE

BYRON COLE hereby states under penalty of perjury under the laws of the State of Washington that the following is true and correct:

I am a founder, (in 1996) and currently, the General Manager, of Ballard Terminal Railroad Company, LLC ("BTRC"). We own and operate two small common carrier freight railroads in western Washington. One is located in the Ballard district of Seattle, and the other is located in the Puyallup River valley. We also operate the freight service on a third rail line as described below.

In 2008, in a partnership with GNP Railway, we submitted a joint bid to BNSF railway to provide common carrier rail service operations for the Port of Seattle, over the Port's soon to be acquired Eastside rail network. On October 3rd, 2008, GNP and BTRC were notified by BNSF that we were the successful bidders. [EXHIBIT 1] In early January, 2010, BNSF ran

1 their last freight train on the line, and a few days later, BTRC began providing two days a week
2 freight service, using their own equipment (diesel locomotive and caboose) and their own train
3 crew employees, on the Port's line segment between Snohomish and Woodinville, WA. The
4 basis of BTRC's agreement with GNP was to be that BTRC, through their subsidiary, Eastside
5 Freight Railroad, would market, manage, and operate the common carrier freight service (as it
6 does on its other two lines, Ballard Terminal Railroad, and Meeker Southern Railroad) while
7 GNP developed and made independent arrangements for passenger service over the same line.
8 BTRC was to be GNP's partner, in developing the rail traffic, although Thomas Payne of GNP
9 has presented it otherwise.
10

11 Between January 11, 2010 and December 31, 2010 BTRC received 277 inbound, loaded
12 freight cars at the Snohomish Junction East interchange, from BNSF, and delivered and spotted
13 those cars at various sidings at Maltby and Woodinville. When the cars were empty, BTRC
14 delivered them to the West Snohomish Junction interchange, for pickup by BNSF. We planned
15 to bill GNP \$400 per car, round trip, with no fuel surcharge. We held off invoicing GNP for 12
16 months, hoping our partner would acquire the financing it had been seeking. For the reasons set
17 forth in my attached letter dated December 31, 2010 to Mr. Thomas Payne of GNP, BTRC
18 finally demanded payment for the services it rendered to GNP. No payment has yet been made.
19

20 I no longer trust Mr Payne to act in the best interest of our relationship, or to make his
21 creditors whole, or to be able to provide financial resources for continued operations. Also, his
22 criticism and rude and demeaning treatment of some of BTRC's train crew employees has
23 resulted in their not wanting to be assigned to work on our Eastside Freight Railroad.
24 Incidentally, BTRC,LLC enjoys a completely accident free, no lost time injuries, workplace
25

1 environment, on all three railroads, since rail operations first started in 1998. We have to be
2 doing something right, here....

3 In order to protect our investment, and to honor our common carrier obligation, we are
4 continuing to provide the freight service on this line and protect the customers from rail service
5 disruptions, whether or not we are being paid. Mindfull of our company's own capital outlays
6 to date, (Purchase a Locomotive, Upgrade a Caboose, construct Security Enclosure for both,
7 Total: \$150,000) and the management time and effort we have invested over the last 30 months
8 on this Eastside project, and the future potential we see for it, we intend to soldier on, and
9 continue to operate the freight service. I am however, fearful that Mr Payne will attempt to
10 break our agreement in retribution for seeking payment for our, so far, 13 months of unpaid
11 service. At the moment, BTRC, LLC is planning to continue to provide the freight service on the
12 line until this matter is resolved, and hopefully GNP Railway is reorganized.

14 We want to continue to be GNP Railway's business partner, and to perfect our rights to
15 continue to provide and market the Common Carrier freight service on the Port of Seattle's
16 Eastside rail network, but it seems apparent that changes are needed at GNP Railway's top
17 management level. We hope this can happen.

19 Dated: 2-9-11 at Seattle, WA


Byron D. Cole

**BALLARD TERMINAL RAILROAD
MEEKER SOUTHERN RAILROAD
EASTSIDE FREIGHT RAILROAD**

Subsidiaries of:

Ballard Terminal Railroad Company, LLC
4725 Ballard Avenue NW
Seattle, WA 98107
Office: (206) 782-1447 Fax: (206) 782-7724

INVOICE

December 31, 2010

Mr. Tom Payne, COO
GNP Railway, Inc
410 Garfield St South
Tacoma, WA 98444

During the period January 11, 2010 through December 31, 2010, our Eastside Freight Railroad business received 277 inbound, loaded freight cars from BNSF at the Snohomish Junction East interchange. We delivered and spotted all of those cars at the various consignee's sidings, at Maltby or Woodinville. When the cars were reported to be empty, we pulled them off their spots and delivered them to the BNSF interchange at West Snohomish Junction.

We are billing you \$400.00 per car round trip. We are not applying any fuel surcharge.

277 cars @ \$400.00 = \$110,800.00

Terms: Payment in full upon receipt

We have basically been holding off on invoicing GNP until you got some kind of financing in place, trying to make it easier on you and Doug.

We cannot wait any longer. Our actual variable costs are more than we are billing. It may seem as though this is precipitous, but there has never been any overture from you on this matter during the entire time we have been providing the freight service, and your reluctance to facilitate our acquiring a Modified Certificate of Public Convenience and Necessity, so that we could actually be the freight service provider, be listed in the route, collect the money, do the marketing, etc, is very worrisome. Your plans to operate unit freight trains do not seem to involve us either. We still are looking for the Partnership part of this venture, where you operate the passenger service, and we do the freight.

Byron D Cole

Byron Cole,
Founder and General Manager,
Ballard Terminal Railroad Company, LLC

Exhibit 3

**Declaration of Douglas Engle,
Former CFO of GNP Rly, Inc.,
filed in *In re GNP Rly, Inc.***

**EXHIBITS FILED IN SUPPORT OF
THE REGIONAL GOVERNMENTS' REPLY TO
GNP RLY INC.'S MOTION TO HOLD PROCEEDINGS IN ABEYANCE**

1
2
3
4
5
6 UNITED STATES BANKRUPTCY COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 In Re:

10 GNP RLY, INC.

11
12 Debtor

Case No: 11-40829-BDL

DECLARATION OF
DOUGLAS ENGLE

13
14 DOUGLAS E. ENGLE, hereby states under penalty of perjury under the laws of the
15 State of Washington that the following is true and correct:

16 I am a 50% shareholder and director of GNP Rly, Inc. ("GNP") and until quite recently
17 held the position of Treasurer and Chief Financial Officer for GNP. My 50% partner, Thomas
18 Payne, who is also a director and GNP's president, terminated my employment unilaterally
19 after I proposed a significant restructuring plan to help qualify for a company investment.

20 Although I contest his right to terminate me, I have no interest or desire to be an officer
21 in GNP. My purpose in writing this is to accurately document the facts, help the creditors
22 recover the monies owed them, and provide for an orderly transition of the freight service.

23 I have approximately 30 years experience in finance, accounting, project management
24 and marketing in financial services, software and manufacturing. I have held the positions of
25

1 controller, accounting manager, assistant to the corporate controller of a Fortune 200 company,
2 strategic financial analyst doing mergers and acquisition, and managing products, development
3 and implementing financial software. I have been involved with GNP for over three years, as
4 CFO primarily developing various detailed financial models and business plans. I assumed
5 sole responsibility from Payne for accounting and financial planning in April 2010.
6

7 GNP is insolvent, and this is easily demonstrated. Last year, GNP moved 277 freight
8 cars at typically \$446 per car, generating \$122,000 of income. [EXHIBIT 1] The loss for 2010
9 is approximately (\$694,000), which is essentially being carried by the creditors. The actual
10 freight hauler who owns and operates the locomotive, Byron Cole should receive
11 approximately \$400 of the \$446 per car of revenue at this freight volume, which leaves GNP
12 with \$46 per car or \$12,700 of annual gross income to pay for track operating expenses and pay
13 its creditors, which total over \$870,000 not including any payroll. Even with modest revenue
14 growth, it would take over five decades to pay the current creditors assuming no interest. If the
15 debt were magically wiped away today, the operating costs alone would make GNP insolvent
16 in a brief period of time – months.
17

18 GNP has approximately 30 trade creditors owed an aggregate of approximately
19 \$621,000 of which \$430,000 whose claims are more than 90 days past due. Attached is a
20 preliminary list trade creditors as of December 31, 2010. [EXHIBIT 2] The three petitioning
21 creditors, Ballard Terminal Railroad Company ("BTRC"), Marketing Philharmonic ("MP") and
22 San Clemente Technical ("SCT") are owed a combined \$171,000. Others who have joined
23 their petitioners bring the total to approximately \$220,000, which is over half the over 90 days
24 past due amount.
25

1 In addition, eight notes payables to three people total an additional \$155,000. All but one note
2 is past due. Only one note has ever been repaid. [EXHIBIT 3] These certain and past due
3 liabilities of GNP are: \$56,000 on a loan from Dale Bickenbach that Payne incurred on behalf
4 of the company without my knowledge; \$50,970 to my father Earl Engle for monies lent to
5 GNP; \$43,650 to my wife Joanne Engle for monies lent to GNP.
6

7 In addition, \$28,600 is owed to me for business expenses; \$58,500 to Payne for
8 business expenses; and, \$106,700 to Tom Jones, a consultant to GNP who also holds stock
9 options.

10 The company has no cash or meaningful assets [EXHIBIT 4]. Without an immediate
11 \$10 million investment (approximate) to fund mandatory track repairs, bridge maintenance,
12 capital equipment and operating capital, GNP is insolvent and unable to service the additional
13 freight it needs to reach profitability.

14 There is only one asset of potential value to GNP's creditors, which is the Woodinville
15 Freight Easement that GNP acquired from BNSF for \$10. The only creditor that can make use
16 of this easement is Byron Cole whose company, Ballard Terminal Railroad Company, LLC,
17 operating through its subsidiary Eastside Freight Railroad, is a major creditor. Cole is capable
18 of continuing all Federal Railroad Administration (FRA) and Surface Transportation Board
19 (STB) required train movements for the customers.
20

21 Cole has been the sole operator on the line for the past 13 months, and his companies
22 have successfully operated two other railways in the Puget Sound region for nearly 15 years.
23 GNP partnered with Cole's Ballard Terminal Railroad to provide freight services on the
24 Eastside Rail Corridor formerly owned and operated by BNSF. GNP needed Cole to win the
25 BNSF and Port of Seattle bid for the operating rights on the corridor from Woodinville to

1 Snohomish. GNP's role was to provide passenger rail services and maintenance of the right of
2 way (track, bridges, crossings, etc.). BNSF awarded the opportunity to both GNP and Ballard
3 Terminal in October 2008. [EXHIBIT 5]
4

5
6 GNP does have a viable long-term business plan, which enabled GNP to recently secure
7 a \$30 million Memorandum Of Understanding from private investors ("Highly Confidential"
8 on file at the Surface Transportation Board in FD-35407). In verified statements, a railway
9 financial expert, Robert C. Finley, [EXHIBIT 6] and an investment broker ("Highly
10 Confidential" on file at the Surface Transportation Board in FD-35407) reviewed the GNP
11 business plan and determined it is "viable." Unfortunately, without \$30M in financing, GNP
12 cannot execute this business plan.
13

14 In 2009, a critical agreement was made between Payne, myself and Jim O'Farrell, who
15 at the time was a GNP shareholder, director and officer. This agreement made at the Parkland
16 Bank of America branch was affirmed in March 2010 at a Board of Director's meeting in
17 Woodinville with Jones in attendance. "No officer may enter into an agreement valued at over
18 \$5,000 in a given year without the other officer's written approval." We agreed that
19 expediency was never an excuse for not communicating. This agreement is the centerpiece of
20 necessary financial and Board of Director controls, and one that Payne repeatedly violated to
21 the company's jeopardy. Examples of this include:
22

- 23 • In January 2010, a \$50,000 note was secured from Dale Bickenbach and all funds were
24 used before I knew about the loan. [EXHIBIT 7] Payne controlled the disbursement of
25 the loan proceeds, some of which were expended on personal items such as traveling to

1 Canada to pay-off his storage unit and transport items to his Parkland office. Company
2 insurance was paid \$14,500. A deposit to a printing/copying company was made for
3 \$10,000, which took several months to utilize. A \$3,000 cashiers check was taken out
4 by Payne, which is still unaccounted for, although I believe he simply took his initial
5 capital stock of \$3,000 out of the company. In January 2011, since Bickenbach's note
6 was coming due, I asked Payne to follow-up to see if we could extend the term six-
7 months. Payne claimed to have done this, yet provided nothing in writing to confirm
8 this despite repeated requests. To my knowledge, the interest payment was never made.

- 9
- 10 • GNP had an opportunity to purchase 15 locomotives coming off lease to Union Bank.
11 Payne believed that we could sell most of the locomotives and make enough money to
12 keep a few for our needs. Therefore, the market value of the locomotives is critical as
13 are the interim financing terms. Payne signed a \$3,000,000 agreement with Union Bank
14 to purchase these locomotives. While we discussed pursuing the locomotive purchase
15 and I generally agreed, I never agreed to execute an agreement. Payne executed this
16 agreement alone. The corporate by-laws prohibit such action. Payne grossly
17 misrepresented the value of the locomotives, and claimed that the locomotives were
18 worth \$650-800,000 each. I repeatedly asked for third-party valuations, which came
19 several weeks after Payne entered GNP into the agreement at \$275-325,000 each, which
20 was totally detrimental to the investment. [EXHIBIT 8] Payne claimed to have secured
21 a \$150,000 loan for the locomotives deposit, which I cannot confirm, as there was no
22 documentation available to me to reconcile this matter.
23
 - 24 • Payne also claimed to have received a \$50,000 loan from Bobby Wolford for the
25 locomotives deposit, also with no paper trail after repeated requests. Fortunately, the

1 deal fell apart due to financing and title issues. Union Bank withheld \$16,000, and I
2 assume Welford is still owed this money by GNP, although it is not in the books.

- 3 • Payne gave me the GNP checkbook in April 2010, and it took several months to get the
4 books in order with incomplete documentation. Payne agreed to discontinue getting
5 money orders without prior approval to facilitate better cash management. Payne
6 continued to write money orders after our agreement. Payne would unexpectedly take
7 cash out of a deposit and not communicate, which caused overdraft situations. We had
8 an agreement that he would not take more than \$300 out of the bank without talking to
9 me, which he also violated. [EXHIBIT 9]
- 10 • In a recent visit to GNP's and Payne's office in Tacoma with our bookkeeper who is a
11 C.P.A., Payne stated that he had a "written lease with Joe" for the office and just needed
12 to get a copy, which was never produced. The office landlord, Joe, came in the office
13 several weeks later, and I asked him about the lease. Joe indicated that there was no
14 written lease and that he and Payne needed to develop one, nearly a year after Payne
15 moved in. I later asked Payne at the request of our tax C.P.A., if he would at least get a
16 statement, which was never done. The office lease situation of \$13,000 remains
17 undocumented. Based on statements from Payne, it appears the \$1,000 per month rent
18 also includes his personal apartment and the office, which is also used for Thomas
19 Payne Holdings and Ferrous Equis, another Payne rail company. [EXHIBIT 10] GNP's
20 share of the rent should be roughly 1/3 of \$500, not all \$1,000.
- 21 • In December 2010, I received a \$19K invoice from Payne from Seattle Asphalt for
22 asphalt crossing work. While the work legitimately needed to be done, Payne had once
23 again entered into a contract in October and never sought my agreement. I was forced
24
25

1 to call Seattle Asphalt for a copy of the agreement. [EXHIBIT 11] Quite recently, since
2 the bill was seriously past due, only the threat of a lien forced the bill to be paid.

- 3 • Payne's expense reports claimed personal expenses and used the company debit card
4 for personal items, which were also claimed as business expenses. The bookkeeper
5 made notes trying to track this. [EXHIBIT 12] This turned into a time consuming
6 process to figure out just what was going on, costing GNP much more than necessary.
- 7 • Payne had an undocumented agreement with J.B. McCallum who was doing work for
8 Payne. I have not seen or signed an agreement or seen an invoice for any work
9 assigned to J.B. McCallum. When McCallum unexpectedly showed up in the Tacoma
10 office, I learned that he expected a \$50,000 payment in the future. Even in my final
11 moments working with Payne, Payne offered no explanation. [EXHIBIT 13]

12
13
14 Payne started and operated the third largest railroad in Canada. After taking the
15 company public, the company was acquired, and he was terminated. He later moved to
16 Tacoma and operated a steam excursion operation that failed. Payne claimed to own the
17 excursion steam locomotive, but I later learned from his former partners that it was actually
18 owned by a Canadian investor who took it as collateral when Payne failed in Tacoma. He
19 claimed to have access to \$25 million in Canada, none of which ever materialized. Over the
20 past three years of working closely together, the deteriorating trust increasingly became an
21 unavoidable and terminal issue to many parties and potential investors.

22
23 The trust eroded initially in estimating costs. In the mid-90's, according to a Standish
24 Group study, I was in the top 5% of all U.S. project managers for delivering within 10% of
25 budget, scope and time. I found a transportation construction study that showed typical railway

1 projects to be 45% over budget, so I was particularly cautious to get written estimates and
2 validate data before reducing contingency amounts. Payne's estimates were sometimes
3 reasonable and other times materially off. The continued exaggerations became so constant
4 and material that I would only accept written third-party figures when dealing with Payne.
5

6
7 Interestingly, Payne created a 2008 financial statement that was put into the company
8 minutes, that showed equity over \$11 million with no basis versus an actual \$3,583.

9 [EXHIBIT 14] I had not seen this version of the financial statements before receiving Payne's
10 original copy of the Minutes Book to make copies. At my request, Payne did replace the pages
11 to actual results as in the company books.
12

13 In February 2010, I was asked by Cole to mediate a dispute between one of his workers,
14 his operations manager and Payne. Payne was totally out of line in his statements and written
15 accusations. Cole recently told me that some of his employees will no longer work on GNP's
16 line in Woodinville because of Payne's behavior. I have witnessed this belligerent behavior
17 myself many times.
18

19
20 Tom Jones of TMJ Group, LLC was contracted over a year ago as a political and
21 transportation consultant. Jones is a major GNP creditor and has an equity option in the
22 company. Jones is the only other person involved in daily activities with GNP, although being
23 "unofficial." Jones has only invested his time, no money, in GNP over the past year.
24
25

1 Despite repeated verbal and written notices to Payne about the need to get GNP's
2 financial house in order, I hoped the situation would improve, but it did not. [EXHIBITS 15]
3 Our bookkeeper and C.P.A. were troubled by the lack of adherence to accounting controls, lack
4 of documentation for major transactions and expense reports by Payne.
5

6 To secure material financing as is required by GNP, a due diligence process is
7 conducted around the company financial statements. A CPA "Audit" or "Review" is typically
8 required. Although GNP could possibly get a "Review", it would likely be "expensive" and the
9 outcome would likely be detrimental to the effort to obtaining financing.

10 It became clear that something major had to be done for GNP to receive any funding
11 and avoid having to permanently close.

12 On Sunday January 23rd, 2011 I met Jones for coffee in Woodinville to explain the
13 dilemma. Jones was angry. He acknowledged that Payne's actions were wrong, but merely a
14 symptom of the first year of operations. Jones went on the threaten to sue me personally,
15 proudly boasting that he has spent more than he got suing someone – just because he wanted to.
16

17 After a Board meeting on January 24, 2011 at Jones house, Payne made it clear he had
18 no intention of implementing changes. His actions were about preserving his power and control
19 instead of was best for the shareholders and creditors. On January 25, 2011 I sent a letter to
20 Payne suggesting a reorganization of the company. [EXHIBIT 16] On January 26 at a Board
21 meeting at my residence, Payne terminated me for unsubstantiated reasons, although I have
22 asked him to justify his reasoning. [EXHIBIT 17 – *confidential personnel matter*] I remain a
23 50% owner, and it is highly questionable if Payne can legitimately terminate me because the
24 bylaws appear to require a majority of the board to fire an officer, let alone a director.
25

1 After my disputed termination, Payne's actions are still in question. Jones supported
2 Payne in his termination of my employment. Jones also immediately sought to purchase my
3 shares, which combined with his options would have given him control of the company. Tom
4 Jones sent an email and called two creditors, my wife and father, offering to pay their debt if I
5 gave Jones my shares in GNP. The email shows both Jones and Payne knew bankruptcy was
6 likely. Even so, Jones was trying to make a side deal with these creditors to force the sale of my
7 shares to him. Jones use of coercion is consistent with his threat to personally sue me if GNP
8 didn't pay him, demanding payment, and did all this while he was negotiating a contract
9 extension with Payne. [Exhibit 18]
10

11
12 Payne recently called two creditors to say they would be paid eminently but did not
13 contact all of the creditors. He sent a check to Seattle Asphalt asking them to hold it until he
14 had the money. Payne did not contact one of the largest and critical creditors, Ballard Terminal
15 LLC which operates the current freight service for GNP, its only revenue generator. Thus
16 Payne, like Jones, was trying to give preferential treatment to certain creditors knowing
17 bankruptcy was likely.
18

19
20 In summary, I do not believe Payne can be trusted to act in the best interests of
21 shareholders or creditors. In any company I have ever worked with, Payne's financial
22 misconduct would have had him immediately terminated for cause. At this time, I am not able
23 to validate GNP's financial statements because of the uncertainty involved, lack of
24 documentation of material transactions, and Payne's personal use of the company bank
25

1 account. GNP can have a viable future but only if the company is reorganized with new
2 management, new investment and adequate financial controls.

3
4 Dated: 2-10-11 at Kirkland WA

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6 Douglas E. Engle
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